

Department of Energy

§ 503.23

(iii) Unavailability of adequate land or facilities for handling, using, or storing an alternate fuel;

(iv) Unavailability of adequate land or facilities for controlling and disposing of wastes, including pollution control equipment or devices necessary to assure compliance with applicable environmental requirements;

(v) Unavailability of adequate and reliable supply of water, including water for use in compliance with applicable environmental requirements; or

(vi) Other site limitations exist which will not permit the location or operation of the proposed unit using an alternate fuel.

(b) *Evidence required in support of a petition.* The petition must include the following evidence in order to make the demonstration required by this section:

(1) Duly executed certifications required under paragraph (a) of this section;

(2) Exhibits containing the basis for the certifications required under paragraph (a) of this section (including those factual and analytical materials deemed by the petitioner to be sufficient to support the granting of this exemption); and

(3) The anticipated duration of the site limitation which constitutes the basis for the exemption.

(c) *Duration.* This temporary exemption, taking into account any extensions and renewals, may not exceed five years.

[46 FR 59903, Dec. 7, 1981, as amended at 54 FR 52894, Dec. 22, 1989]

§ 503.23 Inability to comply with applicable environmental requirements.

(a) *Eligibility.* Section 211(a)(3) of the Act provides for a temporary exemption due to an inability to comply with applicable environmental requirements. To qualify a petitioner must demonstrate that despite diligent good faith efforts:

(1) The petitioner will be unable, as of the projected date of commencement of operation, to comply with the applicable prohibitions of the Act without violating applicable Federal or State environmental requirements; and

(2) The petitioner will be able to comply with the applicable prohibi-

tions of the Act and with applicable environmental requirements by the end of the temporary exemption period.

NOTE: (1) For purposes of considering an exemption under this section, OFE's decision will be based solely on an analysis of the petitioner's capacity to physically achieve applicable environmental requirements. The petition should be directed toward those conditions or circumstances which make it physically impossible to comply during the temporary exemption period. The cost of compliance is not relevant, but cost-related considerations may be presented as part of a demonstration submitted under § 503.21.

(2) Prior to submitting an exemption petition, it is recommended that a meeting be requested with OFE and EPA or the appropriate State or local regulatory agency to discuss options for operating an alternate fuel fired facility in compliance with applicable environmental requirements.

(b) *Evidence required in support of a petition.* The petition must include the following evidence in order to make the demonstration required by this section:

(1) Where the petitioner has applied for a construction permit from EPA or an appropriate State agency prior to petitioning for an exemption under this section, a copy of that application and synopsis of supporting documents filed with or subsequent to that application must be submitted to OFE with the petition or at the time filed with the permitting agency;

(2) To the extent applicable, a copy of the EPA or State denial of the construction permit application;

(3) To the extent applicable, a synopsis of the administrative record of the EPA or State or local permit proceedings;

(4) To the extent applicable, a summary of the technology upon which the denial was based, including a performance comparison between the proposed technology and that technology which would provide the maximum possible reduction of pollution;

(5) An examination of the environmental compliance of the facility, including an analysis of its ability to meet applicable standards and criteria when using both the proposed fuel and the alternate fuel(s) which would provide the basis for exemption. All such analysis must be based on accepted analytical techniques, such as air quality

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modeling, and reflect current conditions of the area which would be affected by the facility. The petitioner is responsible for obtaining the necessary data to accurately characterize these conditions. Environmental compliance must be examined in the context of available pollution control equipment which would provide the maximum possible reduction of pollution. The analysis must contain: (i) Requests for bids and other inquiries made and responses received by the petitioner concerning the availability and performance of pollution control equipment; (ii) contracts signed, if any, for an alternate fuel supply and for the purchase and installation of pollution control equipment; or (iii) other comparable evidence such as technical studies documenting the efficacy of equipment to meet applicable requirements;

(6) An examination of any regulatory options available to the petitioner in seeking to achieve environmental compliance (such as offsets, variances, and State Implementation Plan revisions);

(7) Any other documentation which demonstrates an inability to comply with applicable environmental requirements;

(8) No alternate power supply exists, as required under § 503.8 of these regulations.

(c) *Duration.* This temporary exemption, taking into account any extension and renewals, may not exceed 5 years.

(d) *Certification alternative.* (1) To qualify for this exemption, in lieu of meeting the evidentiary requirements of paragraph (b) of this chapter, a petitioner may certify that, for the period of the exemption:

(i) The site for the facility is or will be located in a Class I area or Class II area in which the allowable increment established by law has been consumed, as defined in part C of the Clean Air Act; the use of an alternate fuel will cause or contribute to concentrations of pollutants which would exceed the maximum allowable increases in a Class I or Class II area even with the application of best available control technology; the site for the facility is or will be located in a non-attainment area as defined in part D of the Clean Air Act for any pollutant which would

be emitted by the facility; or, even with the application of the lowest achievable emission rate, the use of an alternate fuel will cause or contribute to concentrations in an air quality control region, of a pollutant for which any national ambient air quality standard is or would be exceeded; and

(ii) No alternate power supply exists, as required under § 503.8 of these regulations.

(2) A petition by certification under this paragraph must include:

(i) Duly executed certifications required under paragraph (d)(1) of this section;

(ii) Exhibits containing the basis for the certifications required under paragraph (d)(1) of this section (including those factual and analytical materials deemed by the petitioner to be sufficient to support the granting of this exemption); and

(iii) The anticipated duration of the circumstances which constitute the basis for the exemption.

[46 FR 59903, Dec. 7, 1981, as amended at 54 FR 52894, Dec. 22, 1989]

§ 503.24 Future use of synthetic fuels.

(a) *Eligibility.* Section 211(b) of the Act provides for a temporary exemption based upon the future use of synthetic fuels. To qualify, a petitioner must certify that:

(1) The petitioner will be able to comply with the applicable prohibitions imposed by the Act by the use of a synthetic fuel derived from coal or another alternate fuel as a primary energy source in the proposed facility by the end of the proposed exemption period;

(2) The petitioner will not be able to comply with the applicable prohibitions imposed by the Act by use of a synthetic fuel until the end of the proposed exemption period; and

(3) No alternate power supply exists, as required under § 503.8 of these regulations.

(b) *Evidence required in support of a petition.* The petition must include the following evidence in order to make the demonstration required by this section:

(1) Duly executed certifications required under paragraph (a) of this section;